



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In Re:

**James C. McCain, Jr.,
Underwriters Service Agency
Missouri Automobile Insurance
Underwriters Agency,
And
Carol Herget.**

Case No. 10-0407429C

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above-referenced matter for consideration and disposition. The Consumer Affairs Division, through counsel, Mary S. Erickson, and Respondent Carol Herget have reached a settlement in this matter and the parties have consented to the issuance of this Consent Order.

Findings of Fact

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration ("Department") whose duties,

pursuant to Chapters 374 and 375 RSMo, include supervision, regulation, and discipline of insurance producers.

2. The Consumer Affairs Division of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The Department originally issued Respondent Carol Herget an insurance producer license (No. 8030962) on June 29, 2009.

4. On May 27, 2010, the Consumer Affairs Division, through counsel, filed a Verified Statement of Charges, pursuant to § 374.046 RSMo (Supp. 2009),¹ against Respondent Herget as well as James C. McCain, Jr., Underwriters Service Agency, and Missouri Automobile Insurance Underwriters Agency. In the Verified Statement of Charges, the Consumer Affairs Division seeks penalties, costs, a summary order prohibiting the continuation of acts, practices, omissions, and courses of business violative of Missouri's insurance laws, and a curative order directing Respondents to take other actions necessary or appropriate to comply with the insurance laws.

5. The Consumer Affairs Division alleged, *inter alia*, the following regarding Respondent Herget, McCain, and Underwriters Service Agency, and Missouri Automobile Insurance Underwriters Agency:

- a) Respondent contacted consumers' mortgage companies to inform them of the homeowners insurance premium amount due to the Missouri FAIR Plan for consumers' homeowners insurance, to which Respondent added a broker service fee to the premium without informing the mortgage companies that the additional amount was for Respondents' fee, not the homeowners insurance premium.

¹ All statutory references are to RSMo (Supp. 2009) unless otherwise indicated.

- b) Respondent Herget, without consent or prior authorization from consumers, changed the premium payments from annual to installment payments, deposited those premium payments into their own account, and only paid installments on those policies, keeping the remainder in their own accounts.

6. In light of these facts, Respondent Herget's resident insurance producer license is subject to discipline pursuant to § 375.141.1(2) for violating § 375.144 (2) and (4).

7. Section 375.141 provides, in relevant part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere; . . . [.]

8. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

9. Title 20 CSR 700-1.140(1)(D) states:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

16. Except as agreed to and provided in Paragraph 13, Respondent Herget stipulates and agrees to waive any rights that she may have to a hearing before the Administrative Hearing Commission, the Director or Department, and any rights to seek judicial review or other challenge or contest the terms and conditions of this Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from any and all liability and claims arising out of, pertaining to or relating to this matter.

17. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

18. The allegations raised by the Consumer Affairs Division are grounds to discipline Respondent Herget's insurance producer license.

19. The Consumer Affairs Division is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to §§ 375.141 and 621.045 RSMo (Supp. 2009) and § 536.060 RSMo (2000).

20. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED THAT Respondent Carol Herget's insurance producer license (No. 8030962) is hereby revoked.

IT IS FURTHER ORDERED that if Respondent does not submit this Consent Order to the Administrative Hearing Commission fifteen (15) days after the execution by the parties, as outlined in Paragraph 13, the Consumer Affairs Division will dismiss, with prejudice, its administrative action against Respondent Herget pending before the Director in *In re: James C. McCain, Jr., et al*, Case No. 10-040729C.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 04 DAY OF OCTOBER, 2010.



JOHN M. HUFF, Director
Missouri Department of Insurance, Financial
Institutions & Professional Registration



CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent Carol Herget has a right to a hearing, but that Respondent waived the hearing and consented to the issuance of this Consent Order.

Carol Herget
Carol Herget
5023 Elenore Ave., 1 North
St. Louis, MO 63116
Phone: 314-932-5123

10/04/10
Date

Respondent Carol Herget

~~Name: _____
Missouri Bar No. _____
Address: _____
Phone: _____
Fax: _____~~

~~_____~~
Date

Counsel for Respondent Carol Herget

Mary S. Erickson ^{TWK 10-4-10}
Mary S. Erickson
Senior Enforcement Counsel
Mo. Bar No. 42579
Missouri Department of Insurance, Financial
Institutions & Professional Registration
301 West High Street, Room 530
Jefferson City, MO 65101
Phone: 573-751-2619
Fax: 573-526-5492

10-4-10
Date

Counsel for the Consumer Affairs Division